

State of New Hampshire Banking Department

In re the Matter of:	)	Case No.: 10-270
	)	
State of New Hampshire Banking	)	
Department,	)	
	)	
Petitioner,	)	Consent Order
	)	
and	)	
	)	
Joseph A. Gembala, III & Associates,	)	
	)	
and Joseph A. Gemabala, III, Esquire,	)	
	)	
Respondents	)	

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CONSENT ORDER

The State of New Hampshire Banking Department (the "Department") finds and Orders as follows:

**Respondents**

1. Joseph A. Gembala, III, & Associates ("Gembala Associates") is a Pennsylvania law firm. Gembala Associates was, during the relevant time period, an unlicensed New Hampshire Mortgage Loan Originator, working with clients obtained through Secure Property Solutions LLC, which was owned by Michael J. Malone.
2. Joseph A. Gembala, III, Esquire ("Gembala") is a Pennsylvania attorney who has now been suspended from the practice of law for two years due to the activity with Secure Property Solutions LLC and Michael J.

Malone. Gembala was, during the relevant time period, an unlicensed New Hampshire Mortgage Loan Originator.

3. Gembala and Gembala Associates shall be hereby collectively known as "Respondents."

#### **Jurisdiction**

4. The Department is authorized to regulate mortgage loan originators and mortgage brokers pursuant to RSA Chapter 397-A. *RSA 397-A:2.*
5. The Commissioner has jurisdiction to issue orders to cease and desist from violations under RSA Chapter 397-A and to assess penalties pursuant to RSA Chapter 397-A. *RSA 397-A:17, RSA 397-A:18 and RSA 397-A:21.*
6. A Person may be assessed an administrative fine not to exceed \$2,500.00 for each violation of RSA Chapter 397-A. *RSA 397-A:21, IV and V.*

#### **Facts**

7. From at least June 12, 2009 through October 31, 2009, Respondents worked with Secure Property Solutions ("SPS") and Michael J. Malone ("Malone"). Neither Respondents, SPS nor Malone was properly licensed with the Department.
8. Respondents contracted directly with New Hampshire consumers for mortgage loan modification services. There are four (4) New Hampshire consumers from whom

Respondents obtained fees totaling \$6,080.00 as follow:

Consumer A = \$1,095.00	Consumer C = \$1,895.00
Consumer B = \$1,395.00	Consumer D = \$1,695.00

9. During the request for information, Respondents fully cooperated with the Department.

**Violation(s) of Law and Penalties**

10. Respondents have conducted unlicensed loan modification activity for New Hampshire consumers without valid Mortgage Broker and Mortgage Loan Originator licenses, in violation of RSA 397-A:3,I.

**Respondents' Consent**

11. Respondents hereby acknowledge that were an administrative hearing to be held in this matter, the Department would introduce evidence demonstrating that Respondents violated RSA Chapter 397-A.
12. Respondents have voluntarily entered into this Consent Order without reliance upon any discussions between the Department and Respondents, without promise of a benefit of any kind (other than concessions contained in this Consent Order), and without threats, force, intimidation, or coercion of any kind. Respondents further acknowledge their understanding of the nature of the allegations set forth in this action, including

the potential penalties provided by law.

13. Respondents hereby acknowledge, understand, and agree that they have the right to notice, hearing, and/or a civil action and hereby waive said rights.

**Order**

14. **Whereas pursuant to RSA 397-A:20,VI,** this Consent Order is necessary, appropriate and in the public interest and consistent with the intent and purposes of New Hampshire banking laws, the Department Orders as follows:

- a. Pursuant to RSA 397-A:17 and RSA 397-A:18, Respondents shall not violate RSA Chapter 397-A and any rules or orders thereunder;

- b. Respondents shall reimburse Consumers A through D the fees charged as described in Paragraph 8 above, payable with the effective date of this Consent Order, which is upon the Commissioner's signature. These consumer checks shall be bank check or guaranteed funds and made payable to each individual consumer and submitted directly to each consumer via first class mail by Respondents as follows:

- Respondents shall reimburse Consumer A a total of \$1,095 in four (4) monthly

installments of \$273.75. Reimbursement to Consumer A shall begin upon the effective date of this Consent Order;

- Respondents shall reimburse Consumer B a total of \$1,395.00 in four (4) monthly installments of \$348.75. Reimbursement to Consumer B shall begin upon the month following the final payment to Consumer A;
- Respondents shall reimburse Consumer C a total of \$1,895.00 in four (4) monthly installments of \$473.75. Reimbursement to Consumer C shall begin upon the month following the final payment to Consumer B; and
- Respondents shall reimburse Consumer D a total of \$1,695.00 in four (4) monthly installments of \$423.75. Reimbursement to Consumer D shall begin upon the month following the final payment to Consumer C.

(1). Each check shall be accompanied by written correspondence containing only the following language: "This refund check is being sent to you pursuant to a public consent order that Respondents entered into with the New Hampshire

Banking Department. You may find a copy of the public consent order on the Banking Department's website at [www.nh.gov/banking/orders/enforcement/index.htm](http://www.nh.gov/banking/orders/enforcement/index.htm) by searching for Docket #10-270. For further questions, please contact the New Hampshire Banking Department at (603) 271-3561;"

(2). Any verbal communications with consumers about the restitution shall be limited to the language found in the written correspondence, and Respondents shall refer the consumer to the Department for further information;

(3). Respondents shall also forward to the Department copies of both cancelled checks or copies of both cancelled check images;

(4). Respondents shall make a second attempt to locate the consumer, if the address to which the restitution check is mailed is no longer valid. Such attempt shall be documented and reported to the Department;

(5). Respondents shall follow up at least once with any consumer who does not cash each check within three months of receipt. Such follow up

shall be documented and reported to the Department; and

(6). If, after six months, a consumer has failed to cash or deposit the restitution check(s), Respondents shall begin the process to escheat the funds to the New Hampshire State Treasurer's Abandoned Property division. Such process shall be documented and reported to the Department. The process of escheatment may begin prior to six months, if so approved or directed by the Department; and

c. Respondents shall pay to the Department \$2,500.00 in administrative penalties, payable within four (4) months of the effective date of this Consent Order, which is upon the Commissioner's signature. The check shall be bank check or guaranteed funds and made payable to "State of New Hampshire."

15. The Consent Order finally and completely concludes this matter against Respondents. This Consent Order may still be revoked and the Department may pursue any and all remedies available under law, if the Department later finds that Respondents knowingly or willfully withheld information used and relied upon in



SO ORDERED.

          /s/Ingrid E. White            
~~Glenn A. Perlow~~, Ingrid E. White  
~~Bank Commissioner~~  
By Delegation of the Bank Commissioner

Dated: 5/21/13